

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KAY GLENN)	
Claimant)	
VS.)	
)	Docket No. 193,097
KINKO'S)	
Respondent)	
AND)	
)	
CNA INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant and her counsel appealed from an Order dated March 27, 1996, entered by Special Administrative Law Judge William F. Morrissey. The Order denied claimant's request to waive attorney fees limitations found in K.S.A. 44-536.

APPEARANCES

Claimant and claimant's counsel have waived oral argument. Claimant's counsel, Patrick R. Nichols, has submitted a brief for consideration by the Appeals Board. The sole issue on appeal relates to claimant's attorney fees and neither the respondent nor the Kansas Workers Compensation Fund have appeared or presented argument. Both have indicated they have no objection to allowing claimant to waive the statutory attorney fee limits.

ISSUES

The sole issue in this appeal is whether the Special Administrative Law Judge erred in refusing to approve a waiver by claimant of the statutory attorney fees limit found in K.S.A. 44-536.

RECORD AND STIPULATIONS

The record in this case includes the transcript of the hearing held February 29, 1996, on claimant's motion to approve attorney fees, the transcript of the settlement hearing held February 21, 1996, and all pleadings filed of record.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes that the Order by the Special Administrative Law Judge denying claimant's request to waive the statutory attorney fee limits should be affirmed.

The statute in question, K.S.A. 44-536, states in pertinent part as follows:

"All attorney fees in connection with the initial or original claim for compensation shall be fixed pursuant to a written contract between the attorney and the employee or the employee's dependents, which shall be subject to approval by the director in accordance with this section. . . . The director shall review each such contract and the fees claimed thereunder as provided in this section and shall approve such contract and fees only if both are in accordance with all provisions of this section. . . .

"Any and all disputes regarding attorney fees, whether such disputes relate to which of one or more attorneys represents the claimant or claimants or is entitled to the attorney fees, or a division of attorney fees where the claimant or claimants are or have been represented by more than one attorney, or any other disputes concerning attorney fees or contracts for attorney fees, shall be heard and determined by the administrative law judge, after reasonable notice to all interested parties and attorneys."

Claimant signed an attorney fee agreement which authorized an attorney fee of 25 percent of the amount recovered for the claimant. Claimant also executed a written waiver of attorney fee limits. That waiver explained that under Kansas Statute attorney fees were limited in workers compensation cases to 25 percent of the first \$10,000 recovered, 20 percent of the second \$10,000 recovered, and 15 percent of all monies recovered in excess of the \$20,000. The document also expressed claimant's agreement to waive those limits and further agreement to pay 25 percent of all amounts recovered. Claimant's

counsel then ultimately resolved the claim by settlement for a lump sum of \$54,000 in addition to certain medical expenses and temporary total disability benefits paid.

Following the settlement hearing, claimant's counsel filed a motion requesting a separate hearing to consider the issues raised by claimant's waiver of attorney fee limits. At that hearing, claimant's counsel presented evidence indicating the complicated nature of the issues in this case and presented expert legal opinions indicating that a 25 percent attorney fee was a reasonable fee in the circumstances of this case. Claimant's counsel also presented the testimony of claimant who expressed again her desire to waive the attorney fee limit and indicated that she was voluntarily doing so.

In spite of the evidence presented at the hearing, the Special Administrative Law Judge concluded that it would be improper for him to approve an attorney fee in excess of the statutory limits found in K.S.A. 44-536. In this case, the difference between the 25 percent authorized by statute prior to amendments in 1993 and the amounts authorized by statutes in the 1993 amendments was approximately \$3,900.

For essentially the same reasons as expressed by the Special Administrative Law Judge at the conclusion of the hearing, the Appeals Board agrees that neither the Special Administrative Law Judge nor the Appeals Board can approve an attorney fee in excess of the statutory limits. The Appeals Board specifically finds that the limits found in K.S.A. 44-536 govern and limit the authority of this administrative court by expressly requiring approval of the attorney fee and stating the limits on the amount which the administrative body may approve. The Appeals Board concludes that it cannot approve an attorney fee in excess of the statutory limits found in K.S.A. 44-536.

Claimant's counsel has made several arguments relating to the constitutionality of the limits in K.S.A. 44-536. The Appeals Board does not address those here. The Board considers itself bound by the statutory limits and without authority to declare an act of the legislature unconstitutional. However, to facilitate further appellate review of this issue the Appeals Board makes the following additional findings of fact:

- (1) The Appeals Board finds that in the absence of statutory limits that an attorney fee of 25 percent of the amounts recovered would be reasonable under the circumstances of this case.
- (2) The Appeals Board finds that claimant did voluntarily waive the statutory limits found in K.S.A. 44-536 and agreed to pay an attorney fee in the amount of 25 percent of any and all amounts recovered.
- (3) The Appeals Board finds that claimant's voluntary waiver was made with knowledge of her rights under the Kansas Workers Compensation Act.

WHEREFORE, the Appeals Board finds that the Order of Special Administrative Law Judge William F. Morrissey dated March 27, 1996, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Patrick R. Nichols, Topeka, KS
Jerry R. Shelor, Topeka, KS
John David Jurcyk, Lenexa, KS
William F. Morrissey, Special Administrative Law Judge
Philip S. Harness, Director